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Regulatory  
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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	100 – Board for Opticians
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 100-20-54
<b>Regulation title</b>	Board for Opticians Regulations
<b>Action title</b>	Amending
<b>Document preparation date</b>	6/20/03

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The intent of the proposed changes in regulations is to increase fees for applicants and regulants of the Board for Opticians (Board). The Board must establish fees adequate to support the costs of Board operations and a proportionate share of the Department of Professional and Occupational Regulation's (Department) operations. By the close of the current biennium, fees will not provide adequate revenue for those costs. The Board has no other source of revenue from which to fund its essential functions required for public health, safety and welfare.

The Department receives no general fund money, but instead is funded almost entirely from revenue collected for applications, renewals, examination fees, and other fees. The Department is self-supporting, and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the Department's authorized special revenue appropriation.

## Legal basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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The proposed regulatory action is mandated by the following sections of the Code of Virginia. To comply with these statutes, the Board evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

Section 54.1-113. (Callahan Act) Regulatory boards to adjust fees – Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under §54.1-308 or §54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-113>

Section 54.1-201.4 describes each regulatory board's power and duty to “levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department...”

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>

Section 54.1-304.3 describes the power and duty of the Director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid..."

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-304>

Section 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-308>

Sections 54.1-113, 54.1-201.4, 54.1-304.3, and 54.1-308 of the Code detailed in the Purpose Section of this document require the Department to:

- pay expenses of each board and the Department from revenues collected;
- establish fees adequate to provide sufficient revenue to pay expenses;
- account for the revenues collected and expenses charged to each board; and
- revise fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the Department:

- accounts for the revenue collected for each board distinctly.
- accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board.
- reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles.
- recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended.

If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

Fee adjustments are mandatory in accordance with these Code sections. The Board exercises discretion in how the fees are adjusted by determining the amount of the adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

The Board for Opticians has no other source of revenue from which to fund its operations.

## Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.*

The proposed changes would amend existing regulations by an increase in fees. The action is based on the financial analysis mandated by Section 54.1-113 of the Code of Virginia.

**Financial Status and Projections**

**Current Fees**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulants</u>
1998-00	59,647	130,563	126,506	63,704	50.4%	1,731
2000-02	63,704	127,303	139,010	51,997	37.4%	1,812
2002-04	51,997	128,497	184,222	-3,728	-2.0%	1,751
2004-06	-3,728	131,215	204,440	-76,953	-37.6%	
2006-08	-76,953	133,839	227,337	-170,451	-75.0%	

**Fee History**

<u>Fee Type</u>	<u>10/15/1986</u>	<u>11/01/95</u>	<u>12/29/97</u>	<u>11/01/99</u>	<u>3/01/01</u>
Application	100	100	80	55	55
Renewal	65	75	65	60	60
Examination		75	75	70	70

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

The Department has considered the following alternatives to increasing fees for the Board for Opticians:

Reduce services – Because the regulatory activities by the Board are mandated by statute, this is not considered a viable alternative. In addition, reductions in services would result in delays in issuing licenses, creating barriers to citizens ability to work, and would decrease the Department’s effectiveness in ensuring that licensees conduct their activities in a manner adequate to protect the public health, safety, and welfare.

Obtain a Treasury loan to fund operations – The Department could request a loan from the general fund to cover the board’s deficit and supplement its ongoing operations. This would be a short term solution only, and would only delay the need for fee increases. When eventually implemented, fee increases would need to be even greater to provide for repayment of the loan.

Supplement board activities with general funds – The Department currently receives no general fund revenue, and this alternative would require a change in the Code of Virginia and the Appropriations Act. Regulatory and advisory boards housed in the Department are intended to be self-funding in accordance with §§ 54.1-113, 54.1-201.4, 54.1-304.3, and 54.1-308 of the Code of Virginia. Use of general funds to support board operations does not appear to be an intended use of the general fund.

### Impact on family

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.*

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The fee increases are not anticipated to have any significant impact on Virginia's families.